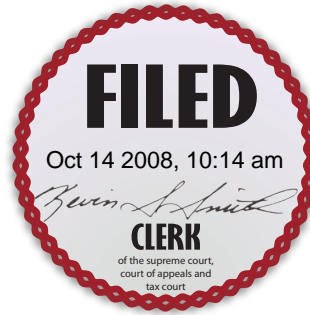


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**JOHN T. WILSON**  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**MELLISICA K. FLIPPEN**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

GARY K. PAUL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 48A02-0803-CR-269

---

APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause No. 48D03-0601-FC-27

---

**October 14, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Gary K. Paul (“Paul”) appeals the trial court’s order revoking his probation and ordering that he serve his previously-suspended four-year sentence for Burglary, as a Class C felony,<sup>1</sup> Theft, as a Class D felony,<sup>2</sup> and Criminal Mischief, as a Class B misdemeanor.<sup>3</sup> We affirm.

## **Issue**

Paul presents the sole issue of whether there is sufficient evidence to establish that he violated a term of his probation.

## **Facts and Procedural History**

On November 27, 2006, Paul pled guilty to Burglary, Theft, and Criminal Mischief. On January 17, 2007, the trial court sentenced Paul to concurrent terms of four years, three years, and sixty days, respectively. The aggregate four-year sentence was suspended to probation. Among the conditions of his probation, Paul was required to obey all municipal, state, and federal laws, behave well in society, and report any new arrest to the Probation Department within 48 hours. He was also ordered to pay restitution to the H & K Motel in Anderson, Indiana.

On May 16, 2007, the State filed a Notice of Violation of Probation, alleging that Paul failed to timely report to the Probation Department or to pay restitution. On June 7, 2007, the State filed a second Notice of Violation of Probation, incorporating the previous

---

<sup>1</sup> Ind. Code § 35-43-2-1.

<sup>2</sup> Ind. Code § 35-43-4-2(a).

allegations and further alleging that Paul had failed to report his arrest for Domestic Battery. On July 2, 2007, the trial court held an evidentiary hearing at which Paul appeared and admitted the allegations against him. The trial court found that Paul had violated the terms of his probation and ordered his incarceration in the Marion County Jail pending an alternative placement. He was later released.

On December 19, 2007, the State filed a third Notice of Violation of Probation, alleging that Paul had committed the following new criminal offenses: Domestic Battery, Strangulation, and Invasion of Privacy. On January 14, 2008, the trial court held an evidentiary hearing and found that Paul had violated the terms of his probation by committing new criminal offenses against his wife. Paul was ordered to serve his previously-suspended sentence. He now appeals.

### **Discussion and Decision**

Probation is a matter of grace and a conditional liberty that is a favor and not a right. Noethlich v. State, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). A probation revocation hearing is in the nature of a civil proceeding, and the alleged violation need be proved only by a preponderance of the evidence. See Ind. Code § 35-38-2-3(e); Isaac v. State, 605 N.E.2d 144, 147 (Ind. 1992). Where the State has alleged criminal conduct as a probation violation, the trial court must find there is probable cause to believe the defendant violated a criminal law. Pitman v. State, 749 N.E.2d 557, 560 (Ind. Ct. App. 2001), trans. denied.

In considering whether the evidence is sufficient to support the revocation of probation, this Court applies the same standard of review applied to all other sufficiency

---

<sup>3</sup> Ind. Code § 35-43-1-2(a)(1).

claims. Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995), trans. denied. Specifically, we neither reweigh the evidence nor judge the credibility of the witnesses and examine only the evidence most favorable to the trial court's judgment and the reasonable inferences that may be drawn therefrom. Packer v. State, 777 N.E.2d 733, 740 (Ind. Ct. App. 2002). We will affirm if there is substantial evidence of probative value supporting the trial court's judgment. Id.

At the probation revocation hearing, the State contended that Paul committed domestic battery by knowingly or intentionally touching his spouse Melinda Paul ("Melinda") in a rude, insolent, or angry manner. See Ind. Code § 35-42-2-1.3(a)(1). The State also contended that Paul committed strangulation by knowingly or intentionally applying pressure to Melinda's neck in a rude, angry, or insolent manner. See Ind. Code § 35-42-2-9.<sup>4</sup>

Officer Nicholas Durr of the Anderson Police Department ("Officer Durr") testified that he and a second officer were dispatched to Paul's home on November 30, 2007, in response to a 9-1-1 call from Melinda. Paul informed the officers that Melinda was hiding in the bathroom. Paul had blood around his lip and was wearing a bathrobe. Officer Durr then interviewed Melinda, who had blood on her right hand.

Officer Durr testified that Melinda had explained the incident to him as follows. Melinda had been asleep in a chair when Paul began yelling loudly at her and licking her face. Melinda asked Paul to stop and moved into another room. Paul followed, took off his bathrobe belt, and began to choke Melinda with it. When Melinda broke free, Paul began to

strike her in the face with the belt. He bit Melinda's hand before she was able to escape and call 9-1-1. The State also presented Melinda's videotaped statement, in which she reiterated the sequence of events that she had described to Officer Durr.

Consequently, there was sufficient evidence supporting the trial court's determination that Paul violated the terms of his probation by committing criminal acts against Melinda. The trial court properly revoked Paul's probation.

Affirmed.

RILEY, J., and BRADFORD, J., concur.

---

<sup>4</sup> The State elected not to present evidence concerning Invasion of Privacy.